

LEE SMART

IBLA 81-1080

Decided October 28, 1981

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 138364 through A MC 138369.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper office of BLM within 90 days after the date of location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Lee Smart, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lee Smart appeals the decision of the Arizona State Office, Bureau of Land Management (BLM), dated September 1, 1981, which declared the unpatented Gold Nuggett #1, Gold Nugget #2, Little Gold #2, Cat Claw #2, Cat Claw #3, and Cat Claw #4 placer mining claims abandoned and void for failure to record with BLM a copy of the official record of the

notice of location for the claims within 90 days after the date of location, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The notices of location show the date of location as May 16, 1979, for each claim. Copies of the notices of location were tendered to BLM on August 31, 1981.

Appellant states the notices of location for the six claims were recorded in Yavapai County, Arizona, July 10, 1979, in book 1228 at 494 and 495, and copies were tendered to BLM on July 12, 1979, along with copies of notices of location for 15 other claims. Appellant avers that BLM refused to accept the six notices as they were indicated as being amendments of locations, so he executed new notices of location which were recorded in Yavapai County July 13, 1979, in Book 1229 at 572 through 583. Copies of these new location notices were mailed to BLM, but without any service fees as he thought the receipt for the 15 acceptable claims issued by BLM on July 12, 1979, and marked "Gold Nugget #1 et al." mining claims, was adequate to cover the fees for these six claims. 1/ Upon inquiry to BLM for the serial numbers of these six claims to identify the notice of intention to hold the claims in 1980, he was advised by BLM that it had no record of the claims here at issue. 2/ When he resubmitted copies of the notices of location with the appropriate service fees, they were rejected. Appellant contends his problem was caused by BLM errors in not accepting the notices originally tendered in 1979 and in incorrectly identifying the claims covered by his earlier receipt.

[1] The owner of an unpatented mining claim located after October 21, 1976, has to record the location notice with the proper office of BLM within 90 days after the date of location. Section 314, FLPMA, supra. The pertinent regulation is 43 CFR 3833.1-2. Recordation is effected only by filing in the proper BLM office a copy of the official record of the notice or certificate of location filed in the county recording office, accompanied by the proper service charge of \$5 per claim. 43 CFR 3833.1-2(a) and 3833.1-2(d). Failure to comply with the regulations governing recordation of the notice of location of an unpatented mining claim must result in a conclusive finding that the claim has been abandoned and that it is void. Walter Schivo, 55 IBLA 40 (1981); Edwin Forsberg, 47 IBLA 235 (1980); Joe B. Cashman, 43 IBLA 239 (1979); 43 U.S.C. § 1744(c) (1976). This Board has no authority to waive the statutory and regulatory requirements, or to excuse a late filing, or to afford relief from the statutory consequences, even where BLM is alleged to have given erroneous advice. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

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1/ The record indicates that BLM issued receipt 945701 for \$75 for 15 mining claim recordations, styled "Gold Nugget #1 et al., A MC 47699-47713." The reference to the Gold Nuggett #1 claim was apparently in error.

2/ There is nothing in the record before us to indicate that any proof of labor or notice of intention to hold was filed for any of the six claims at issue here.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

